

81. (New) The absorbent article of Claim 68 wherein the second absorbent core component can be replaced by a replacement second core component having the same structure as the component which was removed.

REMARKS

In the Final Office Action dated August 24, 1998, The Examiner stated that Claims 11-22 are pending and stand rejected. The Examiner made the following rejections: (1) Claims 11-22 under 35 U.S.C. §112, second paragraph; (2) Claims 11-21 under 35 U.S.C. §103(a) over Lewis in view of Schiff, Marcus; (3) Claims 12-15 and 17-21 under 35 U.S.C. §103(a) over Murphy or Lewis; (4) Claims 11-22 under 35 U.S.C. §103(a) over Murphy in view of Lewis, Schiff and Marcus; and (5) Claim 22 under 35 U.S.C. §103(a) over Lewis, Schiff and Marcus as applied to Claim 11, and further in view of Murphy. The Examiner also rejected Claims 11, 16 and 23 over Murphy based on Lewis supra. The Examiner also appeared to have maintained the rejection of Claim 11 under 35 U.S.C. §102 over Lewis.

Objections to The Drawings

The Examiner disapproved the proposed drawing corrections, filed on June 5, 1998. The Examiner objected to the drawings because: (i) the same numerals are used in Figures 1-2 and Figures 3-8 "although the structures are not the same, e.g., sheet 62 in Figure 1 has a slit 41 where as in Figure 3 it has a window 44"; (ii) "[a]s proposed 42 in Figure 8 and 57 in Figure 10 and 42 in Figures 1-4 and that in Figure 8 are inconsistent"; and (iii) periphery 57 was not denoted in Figure 8.

Applicants respectfully submit that, as described in the Specification, reference numerals 41 and 44 refer to two different structural elements. In Figures 2, 4 and 5, opening 41 is the space between the backsheet 62, the removable absorbent core 30 and the backsheet pocket 45 such that the absorbent core component can be accessed through opening 41 (see 7:18-32). In Figures 1, 2, 3, 5 and 7, aperture 44 is the discontinuity in backsheet 62, which is used to proximately affix the backsheet pocket 45 or back panel envelope 49 (see 8:10-15; 9:25-28). Applicants respectfully submit that the use of two different reference numerals for different structural elements is proper. Applicants further submit that Figures 1 and 10 have been amended to obviate the objection under (i). Reconsideration and withdrawal of objections are respectfully requested.

Figure 8 has been amended by replacing the arrow with a lead line so that reference numeral 42 refers to the back flap. In Figure 10, both occurrences of reference numeral 55 have been amended to 57, which refers to the periphery. As a result, Applicants respectfully submit that the objections (ii) and (iii) have been overcome. No new matter is added by the amendment because the amendment merely clarifies matters present in the application as filed. Reconsideration and withdrawal of objections are respectfully requested.

Objections to The Specification

The Examiner maintained the objection to the terminology “discontinuous” and “substantially fluid impervious” as being inconsistent. The Examiner suggested that “‘a discontinuous back sheet of substantially fluid impervious material’ could be set forth and such would not be inconsistent”.

Applicants respectfully submit that “discontinuous” and “substantially fluid impervious” are not inconsistent. The term “substantially fluid impervious” refers to a preferred property of the backsheet materials (see 13:35-37), and the term “discontinuous” refers to the discontinuity in the backsheet structure, such as an aperture 44. However, Applicants have amended the abstract and the specification to more clearly define the backsheet. Therefore, Applicants respectfully submit that the objection has been overcome. Reconsideration and withdrawal of this objection are respectfully requested.

By the present amendment, the specification has been amended to more clearly distinguish an opening 41 and an aperture 44. Page 24 of the specification has also been amended, by incorporating the Dyer patent (U.S. Pat. No. 5,387,207) (see 10:21-61 thereof), to more clearly define the polymeric foam materials suitable for use as a storage/redistribution component in the present invention. This patent was incorporated by reference in the application as filed, so no new matter is added.

Two co-pending patent applications disclosed in the specification have been issued as patents and the specification have been amended accordingly.

Claim Rejections

Claim 11 has been amended to more clearly define the first and the second absorbent core components and the backsheet (see 7:2-8:28 and 10:22-11:27). Claims 12, 14, 17, 20 and 21 have been amended and new claims 28, 29 and 32 have been added to more clearly define the materials suitable for use as the first or the second core components (see 17:10-24:23). New Claims 30 and 31 have been added to claim a preferred embodiment as disclosed (see 8:29-9:19). New Claims 43 and 44 have been added to distinctly claim the replaceability of the absorbent core components (see 7:2-4). New Claims 33-81 have been added to more distinctly claim the embodiments disclosed in the application as filed (see 7:2-10:20).

Applicants submit that these changes do not introduce new matter because the amendments merely clarify and distinctly claim matters present in the application as filed and support for each amendment has also been pointed out. Entry is believed to be proper and respectfully requested.

A. Rejections under 35 U.S.C. §112 second paragraph

The Examiner rejected Claims 11-22 under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. The Examiners stated the following: in regard to Claim 11, (i) a positive

antecedent basis for “the wearer” is required; (ii) the terminology “removable and/or replaceable” appears to be redundant since replacement requires removal of the old and placement of the new component; and (iii) the absorbent component in the first waist region needs clarification.

The present amendment to Claim 11 obviates the antecedent basis requirement for “the wearer” and the redundancy regarding “removable and/or replaceable”. Furthermore, the amended Claim 11 clearly points out that the second absorbent core component is located in the first waist region. In view of the amendment, Applicants respectfully request reconsideration and withdrawal of the rejection to Claim 11. Claims 12-22 depend from Claim 11, having all the limitations of the base claim, so amendment to Claim 11 overcomes rejection of these claims. Reconsideration and withdrawal of rejection of Claims 12-22 is respectfully requested

B. Rejections under 35 U.S.C. §102 over Lewis

Given the comments in the second paragraph on page 4, the Examiner appeared to be maintaining the rejection of Claim 11 under 35 U.S.C. §102 over Lewis. Although the Examiner has not clearly rejected the claim, Applicants will respond as if the rejection has been maintained. The Examiner stated that “the claim does not require limitations of the multi-component absorbent core not taught by Lewis. The Examiner admitted that Lewis device does not include “a reclosable flap and fastener and the capability of removal of the absorbent component without removal of the article”.

Applicants respectfully point out that the amended Claim 11 describes an article having an absorbent core of two distinct components - a first and a second absorbent core component. The first absorbent core component is located at least in a crotch region and the second absorbent core component is located in a waist region. The second absorbent core component is in fluid communication with the first absorbent core component. Each component may have a single or multiple layers.

In contrast, Lewis teaches a single-component pad 12 interposed between sheets 6 and 7. Each sheet was cut from a piece of fabric and has curved portions B and straight portions A, and pad 12 is the material enclosed by the curved portions B (see 2:26-45). Each sheet has waistband portions 8 and 9 and a relatively narrow intermediate crotch fitting portion 10. (see 1:90-105). B and A correspond to the edges of the crotch and the waistband regions, respectively (see Figs. 2 and 8). Thus, pad 12 is a single component that extends through the crotch region and terminates in the waistband portions at opposite ends of the diaper. Applicants respectfully submit that a multi-component absorbent core of the present invention is patentably distinguishable from a single-component absorbent core disclosed by Lewis. Lewis does not teach or suggest a multi-component absorbent core. Neither does Lewis teach or suggest an absorbent core component located substantially in the waist region only.

Moreover, the Examiner admitted that Lewis does not teach or suggest the reclosable flap and fastener for the aperture in the backsheet, nor the capability of removal of the absorbent component without removal of the article from the wearer.

Section 2131 of the MPEP states: “TO ANTICIPATE A CLAIM, THE REFERENCE MUST TEACH EVERY ELEMENT OF THE CLAIM” (emphasis in original). For the reasons discussed above, Applicants submit that Lewis does not teach all the limitations in the absorbent article set forth in the present invention. Therefore, Applicants respectfully submit that the anticipation rejection over Lewis has been overcome. Reconsideration and withdrawal of rejection are requested.

C. Rejections under 35 U.S.C. §103 over Lewis in view of Schiff, Marcus or Murphy

The Examiner rejected Claims 11-21 “under 35 U.S.C. §103(a) over Lewis in view of Schiff, Marcus.” With respect to Claims 11 and 16, the Examiner specifically asserts that “the Lewis device clearly includes all the claimed structure and function except for a reclosable flap and fastener and the capability of removal of the absorbent components without removal of the article” and “[t]o employ a reclosable flap and fastener in combination with a backsheet discontinuity as taught by Schiff and Marcus on the Lewis device would be obvious to one of ordinary skill in the art . . .” Applicants respectfully traverse the rejection.

The third requirement of MPEP §706.02(j) states that the prior art references must teach or suggest all the claim limitations in order to establish a *prima facie* case of obviousness. Applicants respectfully submit that the Examiner has failed to establish a *prima facie* case of obviousness based on the following reasons:

- Lewis does not teach or suggest a multi-component absorbent core as claimed in the present invention, and the Examiner admitted that Lewis does not teach or suggest the reclosable flap and fastener, nor the capability of removal of the absorbent core without removal of the article.
- Schiff discloses a garment having front and back flaps and fastening means for access. Marcus discloses a diaper having a single component insert placed in a pocket of moisture-repellent material and a flap and closure means for access (see 2:15-3:15). Schiff, and Marcus, either alone or in combination with Lewis, do not teach or suggest all the limitations that are not taught by Lewis, so a device combining the teaching of the three references fails to make the claimed invention obvious.

Applicants submit that the Lewis/Schiff/Marcus combination teaches a removable portion extending the full length of the article. There is no teaching or suggestion of a multi-component absorbent core as claimed in the amended Claim 11. Therefore, Applicants respectfully submit that the Examiner has failed to establish a *prima facie* case of obviousness based on Lewis/Schiff/Marcus and the rejections are improper. Reconsideration and withdrawal of the rejections are respectfully requested.

The Examiner also rejected Claims 12-15 and 17-21 under 35 U.S.C. §103(a) over Lewis in view of Murphy. The Examiner admits that although Murphy and Lewis do not teach Applicants' core component composition or absorption pressures, but states that these claimed elements "are merely engineering design choice, and thus do not serve to patentably distinguish the claimed invention over the prior art." Applicants respectfully traverse the rejection.

Because the wearer often discharges bodily fluids, such as urine, in gushes, the acquisition components need to quickly absorb the fluid and partition the fluid from the initial point of contact to other parts of the absorbent core, such as the storage/redistribution components (see 18:21-32), the storage/redistribution components then store the fluid away from the wearer's body and thus provide comfort and prevent leakage (see 22:27-34). A material suitable for use as the acquisition component must be able to desorb the bodily fluid to the storage component. Therefore, the specific properties described in Claim 21 as amended and in new Claims 28-81 are necessary for proper function of the present invention. Moreover, the multi-component absorbent core structure provides the ability to independently vary the materials used in different portions of the absorbent article. Based on the foregoing, Applicants respectfully submit that the properties of the absorbent core components are not merely design choices, as asserted by the Examiner. Thus, Applicants respectfully submit that the Examiner has failed to establish a *prima facie* case of obviousness based on Lewis/Murphy. Therefore, the rejections are improper. Reconsideration and withdrawal of the rejections are respectfully requested.

D. Rejection under 35 U.S.C. §102 over Murphy

The Examiner rejected Claims 11, 16 and 23 as unpatentable "with respect to Lewis supra" and "is repeated here but with respect to Murphy." There is no clear indication of the statutory basis nor the grounds of the rejection. Applicants assume that the Examiner is referring to the first paragraph on Page 2, which is the only discussion of Lewis alone and that this is similarly a §102 rejection. Applicants assume, based on the first paragraph of Page 2, that the Examiner asserts the Murphy device includes all the claimed structure and function except for a reclosable flap and fastener and the capability of removal of the absorbent components without removal of the article. In response, Applicant respectfully direct the Examiner to the amendment to Claim 11.

A single component absorbent core, as taught by Murphy, extends the full length of the absorbent article. As discussed above, the multi-component absorbent core in the amended Claim 11 is structurally different from a single component absorbent core. Murphy does not teach or suggest a multi-component absorbent core which has removable portions that are disposed substantially in the waist region and do not extend through the crotch region.

Moreover, Murphy fails to teach the claimed discontinuity in the backsheet; rather, Murphy teaches fastening means which secures the diaper to the wearer and an opening in the interior side of the diaper (i.e., facing the wearer's skin) (see 2:03-04). One must open the fastening means, thereby

release the diaper from the wearer, in order to remove and replace the inserts through the opening. In contrast, the present invention has an opening on the exterior side of the backsheet and a reclosable flap and fastener for the opening. Removal and replacement of the inserts can be achieved without removing the article from the wearer.

Additionally, Murphy discloses a double thickness, pocketed napkin wherein pads are inserted in a pocket which is formed between the two exterior layers (see 1:28-36). Murphy further stresses that both surfaces of the exterior layers can be aired and dried because the pocketed structure allows air into the pocket (see 2:83-88). Murphy in no way teaches or suggests a single exterior layer because it would not form a pocket.

For the above reasons, Applicants submit that Murphy does not teach all the limitations in the absorbent article set forth in the present invention. Reconsideration and withdrawal of rejection of Claim 11 is respectfully requested.

Regarding Claim 16, Applicants respectfully submit that because the Examiner failed to establish anticipation regarding the broader claim, the Examiner's reliance on a reference that allegedly teach a specific limitation is improper. Therefore, Applicants respectfully request reconsideration and withdrawal of rejection of Claim 16.

Finally, Applicants respectfully submit that Claim 23 has been canceled, so the rejection of Claim 23 is moot.

E. Rejections under 35 U.S.C. §103 over Murphy in view of Lewis, Schiff and Marcus

The Examiner rejected Claims 11-22 under 35 U.S.C. §103(a) over Murphy in view of Lewis, Schiff and Marcus. The Examiner stated that "[t]he Murphy device includes all the claimed structure except for providing access through the backsheet or between the front and back sheets, . . . To make the front sheet access of Murphy backsheet or between the front and backsheets access would be obvious in view of the interchangeability as taught by Lewis." The Examiner further suggested that Applicants' core component composition and absorption pressures are "merely a matter of engineering design choices, and thus do not serve to patentably distinguish the claimed invention over the prior art." The Examiner also relied on Murphy's disclosure of a napkin having an opening therein for access into a pocket which contains absorbent pads and the pads may be separately removed and laundered (2:3-13 and 75-88). The Examiner further asserted that to employ a reclosable flap and fastener in combination with a backsheet discontinuity as taught by Schiff and Marcus on the Murphy device would be obvious to one of ordinary skill in the art.

As discussed above, Applicants submit that Murphy does not teach all the limitations in the absorbent article set forth in the present invention. Specifically, Murphy does not teach or suggest a multi-component absorbent core where the removable portions do not extend through the crotch, nor the exterior access means for removal and replacement of absorbent core without removing the article from the wearer. Moreover, the combined references: Murphy, Lewis, Schiff and Marcus do not teach

or suggest the multi-component absorbent core as claimed in the present invention. Nor do the combined references suggest or motivate a skilled artisan to make a multi-component absorbent core or to select different material properties for the different absorbent core components. Applicants respectfully refer the Examiner to the discussion above which clearly shows why the different components have different properties. Applicants respectfully submit that the Examiner has failed to establish a *prima facie* case of obviousness and the rejections are improper. Reconsideration and withdrawal of rejections are respectfully requested.

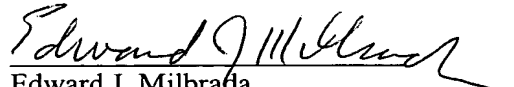
The Examiner also rejected Claim 22 over Lewis, Schiff and Marcus, and further in view of Murphy. The Examiner suggested that "[t]o make the pad without a blocking layer of Lewis multiple independently aired and dried pads including blocking sheets would be obvious in view of the interchangeability as taught by Murphy."

Applicants respectfully submit that since the Examiner has failed to establish obviousness regarding the broader claim, the Examiner's reliance on the references to reject the narrower claim dependent thereof is improper. Applicants respectfully request reconsideration and withdrawal of the rejection.

CONCLUSION

Applicants believe that the above represents a complete response to the Examiner's objections and rejections under 35 U.S.C. §102, §103 and §112, second paragraph. Applicants respectfully submit that the objections and rejections have been overcome. Withdrawal of the objections and rejections and allowance of the claims 11-22 and 28-81 are respectfully requested.

Respectfully submitted,
For: G.D. LaVon, et al.


Edward J. Milbrada
Agent for Applicants
Reg. No. 40,090
(513) 634-6971

November 23, 1998
Cincinnati, Ohio 45224